



June 4, 2020

VIA ECF

Hon. Christian F. Hummel
United States Magistrate Judge
United States District Court—NDNY
James T. Foley Courthouse
Albany, New York 12207

RE: Serenity Alpha LLC et. al. v. Northway Mining LLC et. al., Case No. 19cv00501, Request for Pre-Motion Conference¹

Dear Judge Hummel:

This firm represents Plaintiffs. I write pursuant to L.R. 7.1(b)(2) to request a pre-motion conference on two nondispositive motions because the parties are not able to reach a resolution on them.

The first nondispositive motion seeks attorney fees and costs against Defendants and his attorneys regarding the frivolous positions Defendants have taken in their Motion to Dismiss.

The second regards the hearing scheduled for June 8, 2020. The June 8, 2020 hearing is scheduled to deal with Defendants' Motion to Dismiss. Defendants' Motion to Dismiss argues, in part, that dismissal is required by operation of the forum selection clauses included in agreements between Plaintiffs and Defendants. As to MinedMap et. al., Plaintiffs produced an Agreement that is not the subject of this lawsuit and on which Plaintiffs did not sue. Similarly, and as to Québec, Plaintiffs produced a document that is not in effect and that was cancelled and superseded by a different agreement. Plaintiffs intend to present evidence on the foregoing at the June 20, 2020 hearing.

The hearing as currently scheduled does not appear to be an evidentiary hearing. And, if the hearing proceeds under Rule 12(b)(6), the Court cannot consider any of the additional documents Defendants filed with their Motion to Dismiss. Where there is a challenge to forum, the proper way to proceed is under Rule 12(b)(3), not Rule 12(b)(6).

¹ The undersigned had called Ms. Burt and left messages to get his promotion conference scheduled, but the undersigned did not realize Ms. Burt was still out of the office.





Sincerely,

A handwritten signature in blue ink, appearing to be 'T. Williams', with a horizontal line extending from the end.

T. Edward Williams, Esq.